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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,738	08/19/2003	Thierry Rogelet	107134.01	3819

25944 7590 11/16/2004

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EXAMINER

BARROW, JAMES G

ART UNIT PAPER NUMBER

3749

DATE MAILED: 11/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/642,738	ROGELET, THIERRY	
	<b>Examiner</b>	<b>Art Unit</b>	
	James G. Barrow	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 October 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☒ Claim(s) 4-7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: In claim 1 "including guide means for guiding" (L: 4), "substantially linearly" (L: 5), "generally traverse" (L: 5), and "skewed backwards from orthogonality" (L: 7). In claims 2 and 3 "substantially flat portion" (L: 2).

### ***Claim Objections***

Claim 1 is objected to because of the following informalities: In line 7 in the use of the phrase "skewed backwards from orthogonality" it is unclear as to what skewed backwards from what end of the axis of the lighting rod. Appropriate correction is required.

Claim 4 is objected to because of the following informalities: In line 7 "level" should be - lever -. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hsu (5,865,614) in view of Fremund (5,076,783). Hsu discloses a gas lighting rod having a gas relief valve 22, a piezoelectric igniting system 3, both operated by a spring loaded (not shown) operator 4 that moves in a primarily transverse direction to the longitudinal axis of the gas lighting rod, and a safety member 6. However Hsu does not disclose a

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spring-loaded safety member. Fremund teaches the use of a spring loaded 90 safety member 104 in the same field of invention of lighters for the purpose of rendering "them safe or child proof" (C: 1, L: 6-7). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a spring to bias the safety member, as taught by Fremund, on the safety member of Hsu in order to allow the safety member of Hsu to reset when the operating member 4 is let in the off position. Neither Hsu nor Fremund disclose a guide means for guiding the operating member to move substantially linearly in a direction generally traverse to the axis of the lighting rod, but skewed backwards orthogonality. In regard to the operating member moving in a direction skewed backwards orthogonality. It is the Examiner's position that since claim 1 does not define a front or back of the axis of the axis of the lighting rod the operating member moves in a direction skewed backwards orthogonality. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art for Hsu to have a guide means for guiding the operating member to move substantially linearly in a direction generally traverse to the axis of the lighting rod, but skewed backwards orthogonality because Applicant has not disclosed that guide means for guiding the operating member to move substantially linearly in a direction generally traverse to the axis of the lighting rod, but skewed backwards orthogonality provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well rotating in a direction traverse to the axis of the lighting rod skewed front wards because it would perform equally well. Therefore, it would have

been an obvious matter of design choice to modify Hsu to obtain the invention as specified in claim 1. Regarding claims 2 and 3, it is the Examiner's position that operating member 4 is accessible through a substantially straight portion of the casing 4.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Stein (6,050,811). Stein discloses a gas release valve 82, piezoelectric igniting system 48 (figures 4 and 5), "spring (not shown) within the piezoelectric spark generator 48 returns the trigger 16 to its rest position when the trigger is released. Also on a lower internal end of the trigger is a camming surface 70 which rides on the forward actuation surface 71 on the forward end 72 of the rocker 24, causing the rocker 24 to pivot forward upon depressing the trigger 16" (C: 4, L: 42-48) as can be seen in figures 4 and 5 the rocker 23 is connected to the gas release valve therefor the spring biases the gas release valve and the piezoelectric system, a substantially flat portion through one end of which the operating member is accessible and at right angles to the operating member (see figure 2), and guides means shown in figures 4 and 5 to guide the operating member 16 substantially linearly in a direction generally transverse to the axis of the lighting rod 10. Since the claim does not define the backwards or forwards of the axis of the lighting rod it could be moving in a direction skewed backwards from orthogonality. Alternatively at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have the operating member move in a direction skewed backwards from orthogonality because Applicant has not disclosed that having an

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operating member skewed backward from orthogonality provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the operating member moving in a direction skewed forward from orthogonality because it would perform equally well with the operating member moving in a direction a direction skewed backwards or forwards from orthogonality. Therefore, it would have been an obvious matter of design choice to modify Stein to obtain the invention as specified in claims.

#### ***Allowable Subject Matter***

Claims 4-7 are allowable if the objection to claim 4 is corrected.

#### ***Response to Arguments***

Applicant's arguments with respect to the specification have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of objection.

Applicant's arguments filed 9/30/2004 have been fully considered but they are not persuasive. Applicant's arguments with respect to claims 1-3, based on the modifications to claim 1 have been discussed above.

#### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Contact Information***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to James G. Barrow whose telephone number is (703) 305-5427. The examiner can normally be reached on M-F, 9:30 A.M.-6:00 P.M..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira S. Lazarus can be reached on (703) 308-1935. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
James Barrow

  
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